

NTSB Order No. EA-4965

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 8th day of April, 2002

Respondent.

**OPINION AND ORDER**

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on July 7, 2000, following an evidentiary hearing.<sup>1</sup> The law judge substantially affirmed an order of the Administrator, on finding that respondent had violated sections 91.7(a) and 91.13(a) of the Federal Aviation Regulations, 14 C.F.R. Part 91.<sup>2</sup> The law judge

<sup>2</sup> Section 91.7(a) prohibits operating an aircraft that is not airworthy. Section 91.13(a) prohibits careless or reckless

7431

reduced the proposed certificate suspension from 180 to 120 days, a reduction the Administrator also does not appeal. We deny the appeal.

The Administrator's airworthiness charge stemmed from two alleged defects. First, respondent departed Galveston with a mixture control cable that was not working properly.<sup>3</sup> He was asked to fly the aircraft to Sugarland, Texas, for repair of the cable. The aircraft's owner, who was also a mechanic, asked him to make the flight, and told him that the cable was sticking. When respondent tested it, he found that it was "very sticky." Transcript (Tr.) at 239. Although respondent testified that he had no problem with the mixture control during the short flight, the mechanic at Sugarland found the cable seized and broke it trying to free it.

Second, a few days later, after repair of the cable, respondent and three passengers flew to Alpine, Texas, where he refueled for flight continuation. Shortly after takeoff from Alpine (1/2 mile from the airport), the aircraft crashed. The Administrator introduced evidence that one of the magnetos in the

---

(continued...)

operations. The Administrator here alleged that respondent had been careless, and offered the carelessness charge as a residual violation. See Administrator v. Pritchett, NTSB Order No. EA-3271 (1991) at fn. 17, and cases cited there. The law judge dismissed a charge that respondent had violated § 91.9(a) in operating the aircraft outside its operating limitations; the Administrator did not appeal that dismissal and we will not consider it further.

<sup>3</sup> The complaint alleged that it was "completely broken." See discussion infra.

left engine failed and that the other, in that same engine, was firing on only three cylinders. Respondent admitted that, on takeoff from Alpine, he had not done a run up of the engines, but had done one at Galveston. Tr. at 255.

The law judge found that the cable was inoperable, not completely broken, but concluded that, as a matter of law, the difference was not material. An inoperable mixture control cable rendered the aircraft unairworthy. The law judge also found it more likely than not that the magneto problem existed before the engines were started at Alpine (as the aircraft crashed immediately after takeoff) and respondent was negligent in failing to do a run up, at which time he would have had the opportunity to detect a problem.<sup>4</sup>

On appeal, respondent focuses primarily on the mixture control cable.<sup>5</sup> First, he argues that the complaint must fail because the Administrator did not prove the cable was "completely broken." Next he argues that the law judge's finding that the cable was inoperable is not in accord with the evidence and that, in any case, respondent should be able to rely on the owner/mechanic, who had not felt the need to get a ferry permit. Finally, he argues that the flight was uneventful and that the Administrator has not shown the aircraft unairworthy either

---

<sup>4</sup> The law judge did not specifically find that the magneto problem caused the aircraft to be unairworthy, but it clearly would.

<sup>5</sup> Respondent submitted an amendment to his brief correcting two typographical errors. The Administrator has moved to strike the  
(continued...)

because it did not meet its type certificate or that it was unsafe.

The purpose of the complaint is to put respondent on reasonable notice. The exact wording of the complaint need not be perfectly proved at trial. Administrator v. Sanderlin, NTSB Order No. EA-4510 (1996) at footnote 4; Administrator v. Parrott, NTSB Order No. EA-3692 (1992) at 5-6. Respondent had sufficient notice here. Nor is it reversible error that the law judge found that the cable was "inoperable." Whether that is technically accurate is immaterial, for we do know, from respondent's own testimony, that it was not working properly, or as designed, since its range of travel was restricted enough to affect the pilot's ability to fully regulate the fuel usage of the engine to which it was attached. That is a sufficient finding in this case to find the aircraft not airworthy.<sup>6</sup> Respondent knew or should have known that he should not operate an aircraft with a binding cable that was already malfunctioning in a significant way. This is not so complicated that we would permit him to rely on advice of a mechanic when he should know better. Administrator v.

---

(continued...)  
pleading. The motion is denied.

<sup>6</sup> Generally, an aircraft must conform to its type certificate to be airworthy. While we have held that not every minor defect requires a finding that an aircraft is not airworthy (Administrator v. Werve, NTSB Order No. EA-4213 (1994) at footnote 8), airworthiness required the cable to be reliably operable. Id. at 5. In comparison to the facts in Werve, it is clear that the condition of the cable rendered this aircraft unairworthy.

Olsen, NTSB Order No. EA-3743 (1992). And, it is immaterial that the flight went off without mishap. Id.

Respondent's points of error regarding the magneto are similarly unconvincing. The weight of the evidence at trial supports the law judge's finding that the magneto was not working properly before the Alpine takeoff. See testimony of Inspector Jordan. Respondent's various suggestions of other possible reasons for the failure here could have been developed further at trial by a competent expert witness. Whether respondent performed a run up is immaterial to the airworthiness finding; it would have been relevant to the (dismissed) section 91.9(a) charge.<sup>7</sup> Finally, the carelessness finding is residual to both airworthiness charges, not solely the one regarding the magneto.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The Administrator's motion is denied; and
3. The 120-day suspension of respondent's certificate(s) shall begin 30 days after the service date indicated on this opinion and order.<sup>8</sup>

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

---

<sup>7</sup> That is, the run up is required by the owners manual, which, in our view, sets forth operating limits of the aircraft.

<sup>8</sup> For the purpose of this order, respondent must physically surrender his certificate(s) to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).